# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 598

LINCOLN MANUFACTURING CO., INC., PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is not yet officially reported. The Board's decision and order (R. 1-2, 3-34)[1] are reported at 160 NLRB No. 146.

### JURISDICTION

The decision of the court of appeals was issued on July 7, 1967 (Pet. App. 1a). The petition for a writ

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[1] "R." references are to the portion of the record printed as a joint appendix to the briefs in the court below.

of certiorari was filed on September 11, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the Board properly found that a majority of the employees provided the union with valid authorizations to represent them for collective bargaining.

## STATUTE INVOLVED

The relevant portion of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), is set forth at p. 8a of the Appendix to the petition.

## STATEMENT

### A. The Board's Findings of Fact

1. Late in March 1965,[2] two representatives of the Union,[3] Frank Elbrink and Edwin Winter, met with 22 of petitioner's employees, at a local motel. Elbrink addressed the employees, explaining the benefits of union representation. He told them that the Union, as the collective bargaining representative of a group of employees, could attempt to negotiate a contract with their employer covering wages, seniority, job security, holidays, vacations, and other subjects. El-

[2] All dates are in 1965.

[3] Local Union No. 503, Sheet Metal Workers' International Association, AFL-CIO.

brink then asked the employees whether they wished to be represented by the Union, and they unanimously replied in the affirmative. Elbrink advised the employees that, based on his prior dealings with petitioner's President, Dean Rhoads, he felt that there was a possibility that Rhoads would directly recognize the Union because he "felt that [Rhoads] was a gentleman." (R. 5-6; 108-109.)

Thereafter, the Union representatives and several employees solicited authorization cards [4] from the employees. By May 12, the Union had obtained signed cards from 21 of the 29 employees in the unit (R. 27; 44). The Union then wrote to petitioner requesting recognition and bargaining. Petitioner received the letter on May 17, but did not reply (R. 5; 43, 48, 173). Also on May 17, the Union filed a representation petition with the Board. On May 20, petitioner agreed to enter into a consent election. (R. 6; 46-47).

2. Petitioner then began a campaign to defeat the Union's organization efforts. Thus, on May 20, petitioner wrote to its employees, announcing vacation benefits which were in excess of those specified in its Factory Handbook (R. 7-8). Shortly before the Board election, which was held on July 8, petitioner, in let-

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[4] The card reads (R. 21, n. 17):

AUTHORIZATION FOR REPRESENTATION

I, the undersigned, hereby authorize the SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, or any affiliated Local Union thereof, to represent me for purposes of collective bargaining, and in my behalf, to negotiate and conclude all agreements as to hours of labor, wages, and other conditions of employment.

ters and in a speech delivered by Rhoads the day before the election, warned the employees that overtime would be discontinued and the plant might close if the Union prevailed (R. 11-16). In addition, petitioner's president photographed employees distributing handbills near the plant and asserted that he could fire them for distributing Union literature (R. 18-19).

In the Board election, 11 votes were cast for the Union and 16 against (R. 7; 206). The Union filed objections with the Regional Director, alleging that the Company had engaged in misconduct which affected the election results. The Union also filed unfair labor practice charges. The Regional Director sustained the objections, and ordered that the election be set aside (R. 7; 207-208). Thereafter, a complaint issued on the Union's charges (R. 3).

### B. The Decisions Below

The Board found that petitioner had violated Section 8(a)(1) of the Act by threatening the employees who were distributing handbills with discharge for union activity, by announcing and granting vacations not provided for in its Factory Handbook, and by its letters and the speech to the employees immediately before the election (R. 7-19). The court of appeals affirmed these findings (Pet. App. 4a-7a), and they are not challenged by petitioner here.

The Board further found that on May 17, when the Union requested recognition, it represented a majority of petitioner's employees and therefore petitioner was under a duty to recognize the Union. In addition, the Board found that petitioner had no good

faith doubt as to the Union's majority status, but, rather, had entered upon a campaign of coercion to dissipate the Union's majority. Accordingly, the Board concluded that petitioner had also violated Section 8(a)(5) of the Act (R. 28-30), and ordered petitioner, *inter alia*, to bargain with the Union upon request (R. 33).

The court of appeals upheld all of the Board's findings and enforced its order in full (Pet. App. 1a-7a). With respect to the refusal to bargain finding, the court stated (Pet. App. 3a):

> There were some conflicts and inconsistencies in the testimony of the various witnesses. Granting that resolution of certain issues of credibility had to be made by the Trial Examiner who heard the witnesses, we agree that the record supports his conclusion, as affirmed by the Board, that on May 17, 1965, when Lincoln received the Union's request for recognition, a majority of the employees in the unit had authorized the Union to act as their collective bargaining representative.

## ARGUMENT

Petitioner contends that the Union's proof of majority status is defective because the testimony of seven employees shows that "they signed the cards because they were told that they were being secured 'to get an election'" (Pet. 5). However, the Trial Examiner found, and his findings were adopted by the Board and the court below, that, notwithstanding any reference to an election, the employees under-

stood, and intended, that the cards would authorize the Union to represent them for collective bargaining purposes (R. 21-27). An examination of the record shows that there is ample support for his findings.

Thus, the cards are entitled "AUTHORIZATION FOR REPRESENTATION," and authorize the Union "to represent me for purposes of collective bargaining, and in my behalf, to negotiate and conclude all agreements as to hours of labor, wages, and other conditions of employment" (p. 3, n. 4, *supra*). At the first organizing meeting, Union Representative Elbrink explained the purpose of a collective bargaining representative, obtained a unanimous expression from the 22 employees present of their wish to be represented by the Union, and advised the employees that there was a possibility that President Rhoads of petitioner would directly recognize the Union (*supra*, pp. 2-3). In these circumstances, it is a fair inference that, when the employees subsequently signed the cards, they intended to designate the Union as their representative. The testimony of seven employees, cited by petitioner (Pet. 6, n. 2), does not require a contrary conclusion.

Three of the employees (Garcia, Pion, and Cooper) testified that the solicitor mentioned the possibility of an election, but they also acknowledged that he told them to sign the card if they wanted a union in the shop.[5] While three other employees (William and

[5] Thus, employee Louis Garcia was told by Union Solicitor Long that the purpose of the card was "to try to get the union in there." Long asked Garcia "if [he] wanted to get a union

Ernest Peters, and Towler) testified that they were told by Union Solicitor Winter that the Union needed a certain number of cards in order to obtain an election, the Trial Examiner found that Winter had nonetheless discussed the advantages of collective representation with those employees and had told them that the cards authorized the Union to represent them. (R. 25-26; 112-113.)[6] The seventh employee (Fowler) made no mention of an election, merely stating that he signed the card after attending the meeting at which Union Representative Elbrink had indicated that the Union wanted the cards so that it could represent the employees (R. 23; 121-122).

In sum, the record as a whole fully supports the Board's conclusion that, although the possibility of an election was mentioned in some instances, the employees signed the cards because of their desire to have the Union represent them for collective bargaining purposes.[7]

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in the shop," and Garcia said "Yes." Garcia also stated that he read the card before signing it. (R. 21-22; 54-55, 56.) Similarly, Solicitor Long told employee Frank Pion that "[t]hey were trying to get a union in there. If [he] was interested in . . . getting the union in there, [he should sign] one of these cards." Pion responded "Sure, I will sign one of them." Pion also read the card before signing it. (R. 22-23; 64, 70). And, Long asked employee Larry Cooper "if he wanted a union to represent [him]," telling him that the Union needed a certain percentage of signatures for that purpose (R. 23-24; 84).

[6] Moreover, even if these three cards had been invalidated, the Union would still have had valid authorization cards from 18 of petitioner's 29 employees.

[7] This fact distinguishes the instant case from those cases which petitioner cites as being in conflict with the decision

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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here (Pet. 4-8). Thus, in *National Labor Relations Board* v. *S.E. Nichols Co.* (C.A. 2), June 21, 1967, 65 LRRM 2655, the court found that "the evidence demands a conclusion that at least three of the signers were induced to affix their signatures by statements causing them to believe that the union would not achieve representative status without an election" (p. 2658). It distinguished its earlier decision in *National Labor Relations Board* v. *Gotham Shoe Mfg. Co.*, 359 F. 2d 684 (C.A. 2), on the ground that, in *Gotham*, the union representatives had explained to employees at meetings that, once a majority had signed cards, recognition could be obtained on the basis of the cards alone (65 LRRM at 2659). There was such an explanation here. Moreover, in *Engineers & Fabricators* v. *National Labor Relations Board*, 376 F. 2d 482 (C.A. 5), the employees were specifically told that "the card was not for union membership but was to obtain an election" (p. 486); no such representation occurred here.

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